It seems to me that the question propounded in the Originating Summons must be answered in the affirmative for the following reasons:—

1. When the mortgage to Komarappa Chitty was executed in 1907 the interest which the plaintiff then had in the testator's estate in respect of Eusoff's share in that estate was in my view a mere spes successionis and not an interest vested or contingent in possession or expectancy. A spes successionis is not a title to property in English Law. See *in re Parsons L.R.*[4]; *in re Green L.R.*[3] and 27 *Hailsham* 751 which reads as follows:—

> "No one could have any estate or interest, at law or in equity, in the property of a living person by reason of the fact that he hoped to succeed as heir-at-law or next of kin; and it was the same where there was a limitation by will or settlement of real or personal property to the heir or statutory next of kin of a living person; or where the limitation was not to the actual heir or next of kin at the death, but to the persons who would be heir or next of kin if the ancestor were to die at some future time. Such mere expectation, known as a spes successionis, conferred no actual interest in the property, not even a contingent interest, or an interest in expectancy, since **nemo est hoeres viventis**; and, as long as the ancestor was alive there was no person in whom the right to take by descent resided. And it is the same now as regards persons who may hope to benefit under the rules for the distribution of the residuary estate of an interest in S. 46 of the Administration of Estates Act, 1925. Hence spes successionis is not a title to property."

The mortgage was executed by the "Surety" as attorney of the plaintiff by virtue of a Power of Attorney dated 21.1.1908. The Attorney can only mortgage what his principal authorised him to mortgage and the Power of Attorney does not mention a spes successionis. It refers instead to the plaintiff's interest whether vested or contingent in possession or expectancy in the said estate. Neither does the mortgage itself mention a spes successionis. Therefore if it is correct that the plaintiff's interest, which has given rise to the present case, was a spes successionis as I have found, the plaintiff's interest is not mortgaged and did not pass to Ahmad and the plaintiff has not disposed of her one-third share.

It is a Cardinal Rule of construction of written instruments that the grammatical and ordinary sense of the words has to be adhered to unless that would lead to absurdity or repugnance or inconsistency with the rest of the instrument—Beal on Cardinal Rules of Interpretation, Third Edition, page 81, and the construction I am placing on the mortgage would appear to conform to that rule. There is a technical legal phrase which describes the nature of the plaintiff's interest which the first and second defendants now say passed by the mortgage but that phrase is not used in the mortgage nor in the Power of Attorney under which the mortgage was executed. Furthermore at the time of the execution of the mortgage the chance that the plaintiff would benefit by this spes successionis was a very remote one indeed especially as Eusoof being a Mohammedan could have more than one wife and so was unlikely in the ordinary course of nature to die childless. Again the value of the property actually mortgaged was, I am informed, very much in excess of the money secured and on the face of it there was no necessity to endeavour to make the mortgage all comprehensive in its terms.

2. What I have said so far is sufficient to dispose of this summons, but another point was taken by the plaintiff which I consider a sound one. The interest which Eusoff's next of kin takes seems to me to be under the document exhibited as "R5", an indenture dated the 17th day of May, 1915, (which in my opinion creates a new referential document) and not alone under the Second Codicil to the testator's will, and, if this is so, any prior purported disposition of the interest is not valid and the interest is not affected. This follows the decision in *Sweetaplle v. Horlock*[5]. Exhibit R5 sets out the whole matter in some detail and page 6 recites what Ahmad has acquired by purchase from the plaintiff, and the recital contains no reference to the plaintiff's possible interest in Eusoof's estate though it does refer to her interest in her mother's estate. As Ahmad is a signatory of that document it shows Ahmad's own view of the position at any rate until 1915, and that view is in accord with my present decision.

I make a declaration that the plaintiff is entitled to an equal one-third share, as claimed, in the property set out in the summons.

Judgment for Plaintiff.

[ORIGINAL CIVIL JURISDICTION]
McELWAINE, C.J.
September 2, 1940.

RE MOHAN SINGH
Exparte THE OFFICIAL ASSIGNEE.

[SINGAPORE BANKRUPTCY No. 391 of 1938]

Bankruptcy Ordinance—S. 89 s.s. 1—Jurisdiction of the Bankruptcy Court over a common money demand against a stranger to the bankruptcy.

Even if the Bankruptcy Court has jurisdiction over a common money demand by the Official Assignee from a person who is stranger to the bankruptcy the Court leans strongly against deciding the liability of a stranger to a bankruptcy in the bankruptcy proceedings. In such a case the Official Assignee should bring an action for the debt.

Quaere, whether in fact the Bankruptcy Court has such jurisdiction over such a common money demand from a stranger to the bankruptcy.

Cases referred to:—

(1) *Brown, Ex parte; In re Yates,* L.R. 11 Ch. Div. 148.

(2) *Dickin, Ex parte; In re Pollard, L,R,* 8 Ch. Div. 377.

(3) *Ellis v. Silber,* L.R. 8 Ch. App. 83.

(4) *Fletcher, Ex parte; In re Hart,* L.R. 9 Ch. Dvi. 381.

(5) *Horder, In re,* (1936) 1 Ch. 744.

(6) *Musgrave, Ex parte; In re Woods,* L.R. 10 Ch. Div. 94.

(7) *Sinclair v. Brougham & another,* (1914) 2 A.C. 398.

(8) *Smith v. Baker,* 8 C.P. 350.

MOTION.

R. S. W. Edwardes-Ker for Official Assignee.
Roland St. John Braddell for Ganga Singh.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

McElwaine, C.J.—This is a motion by the Official Assignee of the property of Mohan Singh, a bankrupt, for an order:—

"(1) That the sum of $820 or other the aggregate of the sums which have been wrongly paid by one Lee Siong Kiat to and received by one Ganga Singh son of Vel Singh otherwise called Veer Singh in respect of the judgment obtained by the said Ganga Singh against the said Lee Siong Kiat in Suit No. 66 of 1939 of this Honourable Court be paid to the Official Assignee of the property of the abovenamed bankrupt Mohan Singh by the said Ganga Singh for money received by the said Ganga Singh for the use of the said Official Assignee of the property of the abovenamed bankrupt;

(2) That the promissory note dated the 8th day of October 1938 made by the said Lee Siong Kiat in favour of the said Ganga Singh in respect of which the said judgment in Suit No. 66 of 1939 was given be delivered by the said Ganga Singh or by the Registrar of this Honourable Court to the Official Assignee of the property of the abovenamed bankrupt;

(3) That the costs of this application may be taxed as between solicitor and client and paid by the said Ganga Singh to the Official Assignee, Singapore or to his solicitors Messrs. Drew & Napier."

The facts alleged are as follows:—

On the 20th January, 1939, receiving and adjudication orders were made against Mohan Singh, the principal act of bankruptcy being that he did on the 7th October, 1938, make a fraudulent assignment to Ganga Singh and Channan Singh.

On the 8th October Lee Siong Kiat was indebted to the bankrupt Mohan Singh on a promissory note given two or three years previously. On that date Mohn Singh and Ganga Singh visited Lee Siong Kiat when (it is alleged in an affidavit) Mohan Singh gave up the promissory note to Lee Siong Kiat who signed a new promissory note for $1,378 in favour of Ganga Singh in substitution for the earlier promissory note in favour of Mohan Singh. This allegation is denied in an affidavit by Ganga Singh.

Ganga Singh took action against Lee Siong Kiat on the promissory note (Suit No. 66 of 1939). The suit was undefended and on the 7th March, 1939, Ganga Singh obtained judgment by default against Lee Siong Kiat for $1,519.20 and $61 costs. On this judgment Lee Siong Kiat has paid to Ganga Singh the sum of $820, the sum referred to in the first paragraph of the motion.

The motion is opposed on the ground that the Court in bankruptcy has no jurisdiction to make such an order when the person against whom it is made is a stranger to the bankruptcy.

The Official Assignee's case is that this $820 was really the property of the bankrupt, that by virtue of the receiving and adjudication orders it vested in him on the 7th October, 1938, under S. 46 of the Bankruptcy Ordinance and that S. 89 empowers the Court to make such an order.

Even if Mohan acted fraudulently in the transaction there is no allegation that Ganga Singh was knowingly a party to the fraud if such it was on the 8th October though he was one of the assignees in the assignment which was the act of bankruptcy.

Ganga Singh claims the $820 under a judgment of the Court, a judgment which has not been set aside. Whatever Ganga Singh's rights originally were, they are now merged in the judgment which is the root of his claim.

Section 89 s.s. 1 is to all intents and purposes identical with the first part of S. 72 of the English Bankruptcy Act of 1869 and with the first part of S. 105 s.s. 1 of the Act of 1914. Each of these three sections uses the wide words "all other questions whatsoever." There is here no question of claiming some

specifically identifiable chattel as property of the bankrupt which became vested in the Official Assignee.

Assuming the facts alleged or suggested by the Official Assignee to be correct, it is argued by Mr. Braddell that the Official Assignee waived the tort which may have been committed under S. 51 because he claims the money as money received by Ganga Singh for the use of the Official Assignee, *Smith v. Baker*[8] and that the first prayer in the motion recognizes the validity of the judgment. Such a claim is based on an imputed promise or a *quasi* contract between Ganga Singh and the Official Assignee, *Sinclair v. Brougham & Anor.*[7] and if this is so it is hard to see how the Official Assignee's claim arises in the bankruptcy of Mohan Singh.

Mr. Braddell relied mainly on *Ex parte Dickin, In re Pollard*[2] a case which considerably restricts the apparent generality of S. 72 of the Act of 1869 and of S. 89 s.s. 1 of the Colony Ordinance. That case decided that even if the Court in bankruptcy had jurisdiction over a mere common money demand from a person who is a stranger to the bankruptcy that jurisdiction should not be exercised but the trustee should bring an action for the debt.

I doubt whether it is correct to say that the Court in bankruptcy has no jurisdiction and *Ex parte Dickin, In re Pollard*[2] did so decide. If a person with a claim against property of the bankrupt can submit the determination of his rights to the Court (*Ex parte Fletcher, In re Hart*[4]) it is not obvious why the Court should not have jurisdiction to entertain a converse submission.

But jurisdiction or no jurisdiction they have leaned strongly against deciding the liability of a stranger to a bankruptcy in bankruptcy proceedings.

In *Ellis v. Silber*[3] Lord Selborne said:—

> "That which is to be done in bankruptcy is the administration in bankruptcy. The debtor and the creditors, as the parties to the administration in bankruptcy, are subject to that jurisdiction. The trustees or assignees, as the persons instrusted with that administration, are subject to that jurisdiction. The assets which come to their hands and the mode of administering them are subject to that jurisdiction; and there may be, and I believe are, some special classes of transactions which, under special clauses of the Acts of Parliament, may be specially dealt with as regards third parties. But the general proposition, that whenever the assignees or trustees in bankruptcy or the trustees under such deeds as these have a demand at law or in equity as against a stranger to the bankruptcy, then that demand is to be prosecuted in the Court of Bankruptcy, appears to me to be a proposition entirely without the warrant of anything in the Acts of Parliament, and wholly unsupported by any trace or vestige whatever of authority."

In *Ex parte Musgrave, In re Wood*[6] James, L.J. said:—

> "A man who is merely said to be a debtor to the estate of a bankrupt cannot be brought compulsorily into a Court of Bankruptcy."

Mr. Edwardes-Ker referred me to *Ex parte Brown, In re Yates*[1] a case applicable to the order made by this Court in the present bankruptcy on the 5th May. But the issues in the present case are more complicated. One issue is what were the true circumstances under which Ganga Singh took the promissory note executed by Lee Siong Kiat who was not the bankrupt. It begs the question to say that the Official Assignee has a higher and better title than the bankrupt.

I do not decide that I have no jurisdiction but I think the issues in dispute can be more conveniently dealt with in an action. In *In re Horder*[5] Clauson, J. thought the respondents not to be unreasonable in taking up the attitude that the ordinary procedure should be taken and he gave an opportunity to the trustee to bring an action to raise the issue which he sought to have tried on the motion. I think that the best course to adopt here and I shall make an order similar to that made by Clauson, J., namely, that the motion stand over generally, that if an action is started by the Official Assignee within one month, the motion shall not be restored until the action has been dealt with or disposed of. Costs of this motion reserved. If at the end of one month from this date an action has not been commenced either party may apply. If an action is so commenced such application shall not be made until the determination of the action.

Motion stayed.

[ORIGINAL CIVIL JURISDICTION]

PEDLOW, J.

September 19, 1940.

J.M. ABDUL KADER

v.

SHAW BROTHERS LTD.

[SINGAPORE SUIT No. 139 of 1940]

Tenancy of premises—Specific performance—Monthly letting—Damages—Frustration of contract.

The Court will not decree specific performance of an agreement for a monthly tenancy. If such an agreement is frustrated or rendered impossible of performance by reason of the coming into force of the Rent Restriction Ordinance no damages will be recoverable by either party in respect of the period of such frustration.

Cases referred to:—

(1) *Clayton v. Illingworth*, 122 E.R. 1003.